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# Appeal Decision

Site visit made on 14 September 2021

**by D Hartley BA (Hons) MTP MBA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15<sup>th</sup> September 2021**

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**Appeal Ref: APP/W4705/C/21/3272420**

**Land at 5 Ellercroft Avenue, Bradford, West Yorkshire BD7 2EG shown edged red on the attached plan**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Shafiq Ahmed against an enforcement notice issued by City of Bradford Metropolitan District Council.
  - The enforcement notice was issued on 18 February 2021.
  - The breach of planning control as alleged in the notice is without planning permission the construction of a two storey side extension as shown on the photographs annexed hereto.
  - The requirements of the notice are (i) demolish the unauthorised two-storey side extension, remove all arising materials from the land and make good any damage caused to the building as a result of compliance with the requirements of this notice or (ii) construct the two-storey side extension to accord with the terms of planning permission 16/04100/HOU and approved drawing number 16-114-01.
  - The period for compliance with the requirements is six months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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## Decision

1. It is directed that the enforcement notice be varied by deleting '*drawing number 16-114-0*' in paragraph 5(ii) of the notice and replacing it with '*drawing number 16-114-01 Rev A: 15-07-2016*'. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## Appeals on Grounds (b) and (c)

2. The appeal on ground (b) is made on the basis that the matters comprising the alleged breach of planning control have not occurred. However, there is no dispute between the parties that when the notice was issued the two storey side extension, as shown in the appended photographs, had been constructed. In this regard, I conclude that the ground (b) appeal fails.
3. In effect, the appellant's claim under ground (b) is actually a hidden claim made under ground (c) which is that the matters alleged do not constitute a breach of planning control. While the appellant accepts that the gabled roof of the two storey side extension does need planning permission, and hence constitutes a breach of planning control, he claims that the remainder of the two storey side extension has been built in accordance with planning

permission 16/04100/HOU, dated 22 August 2016<sup>1</sup>, and hence does not amount to a breach of planning control.

4. In respect of the above, the evidence indicates that the two storey side extension was constructed as one single built entity. The roof is not in accordance with any plans approved by the Council and on this basis alone, the whole of the two storey side extension is unauthorised.
5. In addition to the above, there is dispute between the main parties relating to what plans were approved in respect of the aforementioned planning permission. The approval notice refers to '*existing and proposed plans, plan reference 16-114-0, date received 3 August 2016*' and '*location plan reference 16-114-02, date received 23 May 2016*'. There is no dispute that the appellant's agent did send an amended '*existing and proposed plan*' to the local planning authority prior to the determination of the planning application. The appellant claims that he did not authorise his agent/architect to do this, but there is nothing before me to suggest that the local planning authority could have been aware of this. In other words, it is normal practise for an agent/architect acting on behalf of an appellant to submit amended plans.
6. The amended plan shows the roof of the two storey side extension being set down from the main roof of the house and the front wall being set back by about 720 mm from the original front wall of the house. Such an amended plan includes the same plan reference number as the originally submitted plan (i.e. drawing No 16-114-01) but within a separate box there is reference to '*Rev A: 15-07-2016*'. It is very clear from reading the local planning authority delegated officer report that such a plan was considered as part of the determination of the planning application.
7. While the Council did omit reference to '*Rev A: 15-07-2016*' in respect of the approval notice, I am nonetheless satisfied that the planning permission is clear on its face. Indeed, reference is made to plan reference 16-114-0 which was '*date received 3 August 2016*'. This cannot be the existing and proposed plans submitted as part of the original planning application, i.e. those received and validated on 23 May 2016. There is no evidence of any other amended plans being submitted as part of the determination of the planning application. I therefore find that the two storey side extension has not been built in accordance with planning permission 16/04100/HOU and hence it constitutes a breach of planning control. Consequently, I conclude that the ground (c) appeal fails.
8. While I have found that planning permission 16/04100/HOU is clear on its face in terms of the actual plans that were approved by the Council, it is nonetheless appropriate that I vary the requirements of the notice (i.e. paragraph 5(ii)) so that it explicitly refers to Rev A: 15-07-2016. I am satisfied that there would be no injustice caused to any interested party in making this variation.

### **Appeal on Ground (a) and the deemed planning application**

9. The appeal has been made on ground (a) of s174 of the Town and Country Planning Act 1990 (as amended) which is that planning permission ought to be granted in respect of any breach of planning control which may be constituted

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<sup>1</sup> Construction of two storey side and rear extension, porch.

by the matters stated in the notice. I have considered the reasons for issuing the notice and the main issue is the effect of the breach of planning control on the character and appearance of the area.

10. The appeal property is semi-detached and is positioned on a prominent corner plot falling within a cul-de-sac of similar brick built semi-detached dwellings, most of which have hipped roofs. In the main, the dwellings retain a similar appearance in terms of the use of materials and roof styles and while some have been altered/extended there remains a general balance and symmetry to the semi-detached properties in this immediate area.
11. The roof of the two storey side extension is gabled and is at the same height as the ridge line of the roof of the original house. In addition, the front wall of the two storey side extension is flush with the front wall of the original house. Overall, the two storey side extension appears bulky and out of proportion with the original house and has materially upset the balance and symmetry of the pair of semi-detached dwellings. This harm is compounded as a result of the construction of a gabled roof which is not reflective of most of the other roofs in the cul-de-sac. Furthermore, it is at odds with the roof belonging to the adjacent semi-detached house.
12. As a result of the above, the breach of planning control looks incongruous in this street, detracting significantly from the otherwise relatively consistent pattern of development and where the majority of extensions are much more subservient in scale. I acknowledge that the Council does appear to have approved planning permission for a gabled roof at No 25 Ellercroft Avenue, but I do not have full details of the exact circumstances which led to that being approved and, in any event, the existence of such development would not change my view that the street would continue to retain a general consistency in terms of house design and proportions. There are new build properties on the north eastern boundary of the site that have gabled roofs, but these are not seen in the same context as the cul-de-sac.
13. I find that there is specific conflict with the Council's Householder SPD (SPD) which requires that *'two storey extensions will normally require a 1 metre set back behind the front wall of a house, with a corresponding lowering of the roofline set back by 1 metre from the front wall of the house'*. I acknowledge that this requirement was not fully met in respect of planning permission 16/04100/HOU in so far that the two storey side extension is shown as being set back by only 720 mm from the original front wall of the house. However, that represents a marked improvement relative to the unauthorised development which includes an uncharacteristic gabled roof which is not stepped down, and a front wall which is flush with the front wall of the original house.
14. I therefore find that the breach of planning control has caused significant harm to the character and appearance of the area and has failed to accord with the design requirements of policy DS1 of the Core Strategy Development Plan Document 2017 (CS); the SPD and Chapter 12 of the National Planning Policy Framework 2021 (the Framework).
15. The appellant has submitted an alternative proposal as part of the appeal (appendix J – drawing No 456-001-1007 Rev A). This shows the retention of the two storey side extension albeit with a lowering of the gabled roof by 200 mm. While this would go some way to making the side extension appear more

subservient in scale to the original house than the unauthorised development, it would not overcome my concerns relating to the fact that the front wall is not set back and also the out of keeping gabled roof. The alternative development proposal would therefore fail to accord with policy DS1 of the CS, the SPD and the Framework and would appear dominant, bulky and intrusive in this residential environment. It would also fail to suitably retain any sort of design balance or symmetry across the pair of semi-detached dwellings.

16. I therefore conclude that neither the breach of planning control, nor the alternative development proposal, accord with the development plan for the area when considered as a whole and that there are no material considerations which outweigh the conflict with that development plan. Therefore, the ground (a) appeal fails.

### **Appeal on ground (f)**

17. An appeal on ground (f) makes the claim that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
18. The notice requires that either the two storey extension is demolished or that a two storey extension is built in accordance with planning permission 16/04100/HOU. There is no suggestion that planning permission 16/04100/HOU is not extant and I have assumed that this is because other parts of the approved development (e.g. porch) were constructed prior to 22 August 2019 and as per the approved plans. The two requirements either remedy breach of planning control or suitably remedy the injury that has been caused by such a breach of planning control. For the reasons outlined as part of the consideration of the ground (a) appeal, the alternative development proposal would not be acceptable in planning terms.
19. I therefore conclude that the steps required by the notice to be taken are not excessive and hence the ground (f) appeal fails.

### **Appeal on ground (g)**

20. The appeal on ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.
21. The appellant states that six months to comply with the requirements of the notice is too short due to financial hardship caused by Covid-19 and being furloughed. The appellant therefore asks for twelve months. I am not certain if the appellant is still furloughed, but nevertheless the Government has relaxed restrictions in respect of its roadmap. On the evidence that is available to me, I am satisfied that a period of six months is an acceptable period of time to comply with the requirements of the notice.
22. If it transpires that it can be justified that a longer period is needed to deal with the requirements of the notice then under Section 173A (1) (b) of the Act the local planning authority can *'waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 173(9)'*.
23. For the above reasons, I therefore conclude that the ground (g) appeal fails.

## **Conclusion**

24. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

*D Hartley*

INSPECTOR